IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.444 OF 2005.

Smt.Santana Cristalina
Rodrigues & ors. : Appellants.

versus

Mrs.Purificaesse wd/o Casme
D.N.Rodrigues & ors. : Respondents.

Mrs.A.V.Malvankar for the appellants.
Mr.P.S.Gidwani for Respondent Nos. 2 & 4.

CORAM : D.G.DESHPANDE,J.

DATED : 7th June 2005.

ORAL ORDER

1. Heard advocates for the appellants and respondents. The appellants filed a suit in 1974 before the City Civil Court, Mumbai. The only defendant died in 1992. It is the case of the appellants that they had informed their advocate Mr.Nade at that time only to take steps to bring

the legal heirs of deceased defendant on record. However, according to them, the advocate did not take proper steps. The said advocate also died in 2000. Then they came to know about the suit in 2001 and then they took out a chamber summons for bringing the legal heirs of the deceased defendant on record. The lower Court rejected the chamber summons on the ground that the suit has already been abated. Hence this appeal.

2. It is repeatedly and strenuously urged by the counsel for the appellants that appellant No.1 is a female litigant and she should not be made to suffer on account of negligence of the advocate. She also contended that the suit was for accounts. It was pending since 1974 and, therefore, delay, if any, in taking out the chamber summons, should have been condoned by the Court.

3. The prayer is strongly opposed by the counsel for the respondents. He contended that as per the plaint the address of the appellants/plaintiffs is at Mulund (East). Their advocate was also residing at Mulund and there is no explanation why the plaintiffs did not take

any further steps for 8 years. It may be that appellant No.1 was a lady, but there were other appellants/plaintiffs, they could have taken proper steps to prevail upon the advocate to take out a chamber summons in time. There is nothing with the plaintiffs/appellants to show that they had ever intimated their advocate in 1992 itself about the death of original defendant and his legal heirs. There is firstly delay of 8 years and secondly, even then the chamber summons was taken out in 2001. The trial Court, therefore, rightly rejected the chamber summons. There is no merit in this appeal. It is dismissed.

[D.G.DESHPANDE]

07/06/2005 JUDGE.